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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of: ) WT DOCKET No.: 94-147  
 )  
JAMES A. KAY, JR. )  
 )  
Licensee of one hundred fifty )  
two Part 90 licenses in the )  
Los Angeles, California area. )

Room 1, Courtroom A-363  
The Portals Building  
445 12th Street, S.W.  
Washington, D.C.

Tuesday,  
January 19, 1999

The parties met, pursuant to the notice of the  
Judge, at 9:00 a.m.

BEFORE: HON. JOSEPH CHACKIN  
Chief Administrative Law Judge

APPEARANCES:

On behalf of James A. Kay, Jr.:

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
James A. Kay, Jr.					
by Mr. Shainis		2338			
		2432			
by Mr. Keller		2468			

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>James J. Kay, Jr.:</u>			
9	prev.		2454
15	prev.	2403	
16	prev.	2410	
19	prev.		2460 (w/d)
21	prev.	2412	
22	prev.	2413	
31	prev.	2415	
36	prev.		2421 (w/d)
64	2372	2374	
65	2383	2391	
66	2385	2391	
67	2501	2508 (P.2-56)	
//			
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2325

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>WTB:</u>			
292	prev.	prev.	2424
293	prev.	prev.	2426 (w/d)

Hearing Began:	9:00 a.m.	Hearing Ended:	4:00 p.m.
Recess Began:	12:00 a.m.	Recess Ended:	1:15 p.m.

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1                                    P R O C E E D I N G S

2                    CHIEF JUDGE CHACKIN: Are there any preliminary  
3 matters?

4                    MR. KELLER: Yes, Your Honor. I'm going to make  
5 my perennial motion, this time a little more specific, renew  
6 my motion on the Paul Oei testimony and I have specific  
7 transcript references at this point.

8                    I'm asking that transcript pages 1352, line 24,  
9 through 1372, line 15, be stricken, and that's the testimony  
10 regarding the May, 1992 --

11                   CHIEF JUDGE CHACKIN: Excuse me, I didn't get it.  
12 1352 --

13                   MR. KELLER: Page 1352, line 24, through 1372,  
14 line 15. And, but for descriptive purposes, that's Mr.  
15 Oei's testimony regarding the May, 1992 inspection, the  
16 cross-link, repeater-link, whatever you want to call that  
17 device.

18                   This does not affect Mr. Oei's testimony regarding  
19 his own 1997, I believe it was, inspection of Mr. Kay's  
20 facilities. I've already argued the reasons for it.

21                   CHIEF JUDGE CHACKIN: Could you summarize them,  
22 briefly?

23                   MR. KELLER: Well, basically, that this presumably  
24 is being offered as evidence relevant to the interference  
25 issue designated in this case. But, the testimony goes

1 solely to an inspection of this link at the Van Nuys office  
2 conducted in May of 1992. That matter was already,  
3 subsequent to that inspection, that matter was the subject  
4 of both a notice of apparent liability, which was timely  
5 responded to, following which a forfeiture order was issued,  
6 as to which a timely petition for reconsideration was filed.  
7 I would note that neither of those two items made a finding  
8 of malicious or harmful interference, number one. Number  
9 two, the petitions for reconsideration remain pending, so  
10 it's a separate matter. And, number three, if I submit that  
11 this were what the Commission had intended when it  
12 designated the malicious interference issue, it would have  
13 said so.

14 CHIEF JUDGE CHACKIN: What's your response?

15 MR. SCHAUBLE: Your Honor, we do not have the  
16 transcript at this time, so we can't comment specifically.  
17 Generally, we would say first that the notice of apparent  
18 liability did not specifically address the issue of willful  
19 and malicious interference. I don't think there's any undue  
20 duplication here.

21 You'll notice there's apparent liability  
22 addressing different rule violations arising from that  
23 inspection.

24 CHIEF JUDGE CHACKIN: But, it was the same  
25 inspection?

1 MR. SCHAUBLE: It was the same inspection, Your  
2 Honor.

3 CHIEF JUDGE CHACKIN: Mr. Oei saw the same,  
4 reviewed the same machinery.

5 MR. SCHAUBLE: I would say, Your Honor --

6 MR. KELLER: Let me briefly say --

7 CHIEF JUDGE CHACKIN: Let me finish with him.  
8 Apparently, Mr. Kellett was going to go back to his people  
9 and come back and let us know what they thought about the  
10 matter.

11 MR. SCHAUBLE: Your Honor, I would make one note.  
12 I think there's a concern about duplicity of forfeitures  
13 here somehow, and I don't think, you know --

14 CHIEF JUDGE CHACKIN: I mean, as to the situation  
15 where they reviewed the same equipment and in one case, they  
16 didn't consider it to be malicious interference, as you say,  
17 and didn't charge him with it, and now you're viewing the  
18 same equipment now, you're alleging a malicious  
19 interference. Isn't there any inconsistency there? I mean,  
20 they had the opportunity to view it and to make the same  
21 judgment at the time of the notice of apparent liability.  
22 What happened since then -- you then change that and now  
23 view it as malicious interference, but they didn't feel it  
24 was at the time of the inspection.

25 MR. KNOWLES-KELLETT: I think that it's not



1 inconsistent, Your Honor. The reason is, they cited him for  
2 unlicensed use of the repeater, and they didn't have to make  
3 a finding of interference to issue the notice of apparent  
4 liability. And, we think, combined with testimony that  
5 mostly goes to the admissions of Jensen, Jensen being told  
6 by Mr. Kay that he was causing interference, combined with -  
7 - and we were thinking there would be better testimony on  
8 this, quite frankly, Your Honor, from Mr. Cordaro. Mr.  
9 Cordaro did not remember --

10 CHIEF JUDGE CHACKIN: So, the sole basis of it is  
11 the Jensen testimony that he was told by Mr. Kay?

12 MR. KNOWLES-KELLETT: That combined with that  
13 would be our case --

14 MR. SHAINIS: Your Honor, I don't believe my  
15 recollection is that Jensen's testimony was that he  
16 witnessed any interference.

17 CHIEF JUDGE CHACKIN: Oh, clearly, he didn't  
18 witness any. Nor, did he participate in any. He claims  
19 that at some point, Mr. Kay told him that he used it for  
20 that purpose, but that's it.

21 MR. SHAINIS: I don't believe that was his  
22 testimony.

23 MR. KELLER: Your Honor, I want to also point out  
24 that I strongly disagree that the notice of apparent  
25 liability and the forfeiture orders, because they didn't

1 cite for interference, somehow leaves that issue open.

2 I would note that the May, 1992 inspection was,  
3 indeed, an inspection arising out of an enlarged  
4 interference complaint. They were there inspecting  
5 interference. When they got there, the best they could do  
6 was find a typical violation which we dispute anyway, and  
7 that's a matter that's being argued in the other proceeding.

8 But, I mean, I find it strange to say you can  
9 investigate somebody for an interference complaint in 1992,  
10 write him up, not charging him with interference and then,  
11 you know, three years later, designate him for a hearing on  
12 an interference issue, and not even mention that, oh, by the  
13 way, this is the 1992 matter that's still pending that's the  
14 reason for this issue. I don't get that.

15 CHIEF JUDGE CHACKIN: What's your answer to that?  
16 Weren't you investigating an alleged interference problem  
17 when you conducted the inspection in 1992?

18 MR. KELLER: The witness so testified.

19 MR. KNOWLES-KELLETT: Your Honor, I don't think  
20 there's any dispute. It was an alleged interference.

21 CHIEF JUDGE CHACKIN: But, you didn't find any  
22 interference. Now, all of a sudden, on the same basis,  
23 you're alleging interference, malicious interference. Isn't  
24 that a little inconsistent? I mean, what happened since  
25 then -- it's the same evidence, that would now cause you to

1 believe it was malicious interference when the purpose of  
2 the investigation, which resulted in apparent liability, was  
3 an allegation of malicious interference? You have no  
4 explanation, I assume, for that?

5 MR. KNOWLES-KELLETT: No further than I already  
6 explained to you, Your Honor, that it's not inconsistent to  
7 have just, to cite them for one-rule violations when there  
8 are multiple-rule violations. You know, the field office  
9 just cited the unlicensed operation.

10 CHIEF JUDGE CHACKIN: Even though they  
11 investigated malicious interference, and apparently they  
12 found no malicious interference? They didn't cite him for  
13 that.

14 MR. KNOWLES-KELLETT: Well, I disagree with that.  
15 I agree that they did not cite them. I don't agree that  
16 they did not find it.

17 MR. KELLER: So, in my understanding, if an  
18 investigator shows up, I cooperate, he investigates, he  
19 cites me for whatever, I take care of whatever it is I'm  
20 cited for, but I don't assume that's it? I mean, for the  
21 rest of my life, I have to worry that still someday, two,  
22 three, four years down the road, I'm going to get designated  
23 for something regulating in that investigation that he chose  
24 not to put in his report? I mean, that's what we're saying  
25 here. That doesn't make any sense.

1           And, I still come back to, I don't even care what  
2     the Bureau says. My point is, I don't think this is what  
3     the Commission could possibly have intended when they  
4     designated a malicious interference issue. If it was, it  
5     seems to me they would have referenced the earlier  
6     proceeding and disposed of it.

7           The HDO does not talk about what is the instance  
8     of interference that's alleged. I submit that if there was  
9     a matter of an outstanding proceeding, they would have so  
10    said.

11          So, my objection really is that this evidence, if  
12    this is the evidence to the interference, it goes beyond the  
13    scope of the designated issue. Because whatever the  
14    designated issue means, it does not mean things rising out  
15    of that May, '92 inspection.

16          MR. SCHAUBLE: Your Honor, there's nothing in the  
17    HDO which acts as a limitation in any way in terms of the  
18    evidence that's allowable in the issue. Your Honor, the  
19    Bureau would believe that, you know, if there was an intent  
20    to have limitation of that sort in the issue, such a  
21    limitation would have been included within the HDO.

22          CHIEF JUDGE CHACKIN: So, are you saying you're  
23    going to abandon the notice of apparent liability, or what?  
24    You're going to press it to proceedings? Just what? What  
25    is the position of the Bureau? Isn't there a bit of piling

1 on here?

2 MR. KNOWLES-KELLETT: We're not in charge of the  
3 notice of apparent liability, Your Honor. That's a CIB  
4 matter, and --

5 MR. SHAINIS: Isn't that the same Bureau?

6 MR. SCHAUBLE: No.

7 MR. SHAINIS: I'm sorry, you're right, I take that  
8 back.

9 CHIEF JUDGE CHACKIN: Well, I'll have to --

10 MR. KNOWLES-KELLETT: I think, Your Honor, that  
11 it's very simple if it goes to the weight of the case. If  
12 it doesn't demonstrate malicious interference, as Mr. Keller  
13 says, the finding of facts should so read. You know, you  
14 don't have to strike the testimony to find that it's not  
15 sufficient.

16 MR. KELLER: You're right, I don't see that the  
17 evidence proves, that I'll say from my post-findings. My  
18 point right now is that the evidence is beyond the scope of  
19 the designated issue.

20 MR. KNOWLES-KELLETT: I think it's a much easier  
21 thing to reach if we show our burden. You know, you're  
22 making two arguments.

23 CHIEF JUDGE CHACKIN: Well, do you feel you've  
24 established your burden under the issue, based on the  
25 evidence?

1 MR. KNOWLES-KELLETT: The evidence is in the  
2 transcripts, Your Honor.

3 CHIEF JUDGE CHACKIN: Well, you know what's been  
4 offered.

5 MR. KNOWLES-KELLETT: Your Honor, we've only  
6 reviewed the transcript. We may not be making a finding on  
7 this regard, we may be.

8 CHIEF JUDGE CHACKIN: All right, I have to review  
9 those transcript pages before I make a determination what  
10 I'm going to do. I'll look at the transcript.

11 MR. KELLER: The only other preliminary matter I  
12 have is, again, is the various Carla Pfeifer Exhibits 294  
13 through 304, with some exceptions. And, again, my  
14 outstanding question is whether or not I can get  
15 clarification, were these, in fact, copies of the documents  
16 that she testified she gave to, I believe, Mr. Nakamiya?

17 MR. SCHAUBLE: Your Honor, on that point, we  
18 cannot be certain as to whether these copies were copies  
19 that came, were copies handed to the FCC by Ms. Pfeifer, or  
20 copies that came from our files.

21 With respect to one of the exhibits, we have found  
22 a date-stamped copy of the --

23 MR. KELLER: Can I ask you, if it came from your  
24 files, it would have had date stamps, would they not?

25 MR. SCHAUBLE: Not necessarily.

1           MR. KNOWLES-KELLETT: Some of them were date  
2 stamped on the back, and we can't find originals. Only  
3 originals would be -- and we had people search and search,  
4 and all they could find was copies and they said --

5           MR. KELLER: Copies? Which exhibit is this? This  
6 is an extant copy of which exhibit?

7           MR. SCHAUBLE: One moment, Your Honor.

8           MR. KELLER: Well, I can compare them.

9           MR. SCHAUBLE: I've just handed counsel a date-  
10 stamped copy of WTB Exhibit 298, which is the August 3, 1987  
11 letter, and it has a date stamp on it of August 10, 1987.

12          MR. KNOWLES-KELLETT: There's no reason to burden  
13 the record with another copy of it.

14          MR. KELLER: No, I just want to keep it with my  
15 copy. I have nothing else, Your Honor.

16          CHIEF JUDGE CHACKIN: Well, let me say this with  
17 respect to the Oei matter. Is there a case precedent which  
18 prohibits the use of evidence which is, you know, a  
19 situation you have here where there is a notice of apparent  
20 liability that are both dealing with the same subject matter  
21 and the only charges are under one set of rules and the  
22 bringing up of that matter and the hearing designation?

23               I realize that in a matter of fairness, it does  
24 raise a very substantial question. The question is, as a  
25 matter of law, is it improper to do so? That's my

1 difficulty in acting on whether to grant the motion to  
2 strike.

3 MR. SCHAUBLE: Your Honor, I would note one point  
4 in that regard, and that is, under the statute, since Mr.  
5 Kay has not paid the notice of apparent liability, he could  
6 not use nor is apparent liability a forfeiture order, as any  
7 sort of evidence in this proceeding, because the Act is  
8 quite specific that until a notice of apparent liability has  
9 been paid --

10 CHIEF JUDGE CHACKIN: But, you have now withdrawn  
11 the notice of apparent liability. You're not relying on  
12 this proceeding. You want to do both. You want to maintain  
13 your right to seek payment on the notice of apparent  
14 liability and also charge him in this proceeding under the  
15 issues, as engaging in malicious interference. That's what  
16 I'm talking about as a matter of fairness.

17 But, as a matter of law, my difficulty whether or  
18 not it's improper is a matter of law, and I don't' know the  
19 answer to that.

20 MR. KELLER: Well, Your Honor, I don't know that I  
21 have any cases to segue now, but I would say as a matter of  
22 law, I would make two points. One is to sort of reiterate  
23 the point that I've made and perhaps with some time and  
24 thought, I could articulate it better, but it's essentially  
25 that I believe it is within your purview to determine what



1     you may think or what you interpret the Commission as having  
2     meant when it designated certain issues and what are  
3     considered to be within the scope of those issues and what  
4     are not. And, that's one point.

5             Secondly, even assuming you overrule the objection  
6     on that ground and this evidence does come in, for whatever  
7     it's worth under that issue, subject to my reviewing the  
8     statute, I would submit that no forfeiture could attach to  
9     this, not because there's another forfeiture outstanding --  
10    that's one problem -- but, I believe there's a statute of  
11    limitations on forfeitures. I don't believe the Commission  
12    can institute forfeiture proceedings for things that it's  
13    known about for more than a year. And, that certainly would  
14    be true here.

15            They designated this HDO OSC in December of '94.  
16    This matter was something that was inspected and  
17    investigated by them and all the testimony we've heard goes  
18    back to May of 1992. So, I guess what they're saying is,  
19    they can conduct an inspection in May of '92, issue a  
20    forfeiture then, and then, three years later, still revoke  
21    you for it, notwithstanding the forfeiture. But, they  
22    certainly can't impose a forfeiture.

23            CHIEF JUDGE CHACKIN: In this proceeding?

24            MR. KELLER: I don't think so.

25            MR. SHAINIS: I agree, Your Honor.

1 MR. KNOWLES-KELLETT: We agree, Your Honor. Any  
2 forfeitures --

3 CHIEF JUDGE CHACKIN: All right, let's proceed.

4 MR. SHAINIS: Your Honor, I'd like to cross-  
5 examine Mr. Kay at this point.

6 CHIEF JUDGE CHACKIN: All right. Mr. Kay has been  
7 previously sworn and is still under oath. Do you understand  
8 that, Mr. Kay?

9 Whereupon,

10 JAMES A. KAY, JR.  
11 having been previously duly sworn, was recalled as a witness  
12 herein, and was examined and testified further as follows:

13 THE WITNESS: Yes, I do.

14 CHIEF JUDGE CHACKIN: All right.

15 MR. SHAINIS: Your Honor, I am giving the witness  
16 Bureau Exhibits 1 to 20.

17 CROSS-EXAMINATION

18 BY MR. SHAINIS:

19 Q Mr. Kay, would you please look at Bureau Exhibit  
20 1, and that has been admitted into evidence in this  
21 proceeding. It is a January 31, 1994 letter addressed to  
22 you from the Federal Communications Commission and it's  
23 signed by W. Riley Hollingsworth. Do you have that in front  
24 of you?

25 A Yes.

1 Q Could you review it briefly?

2 A Yes.

3 Q Do you recall receiving this letter on or about  
4 January 31, 1994?

5 A It was in early February, yes.

6 Q And, did you review the letter when you received  
7 it? Did you read the letter when you received it?

8 A Yes, I read through it.

9 Q What did you do with it after you read through it?

10 A I faxed it to my attorneys.

11 Q Your attorneys were?

12 A Brown and Schwaninger.

13 Q At this point in time, how long had they been  
14 representing you?

15 A At least four years, if not five. Maybe six.

16 Q What was the nature of their representation? Was  
17 it relative to matters before the Federal Communications  
18 Commission?

19 A They represented me before the FCC.

20 Q They had handled responding to other matters from  
21 the FCC, is that correct?

22 A Yes.

23 Q Did you give them any instructions when you sent  
24 them the January 31, 1994 letter?

25 A Just to review it and respond.

1 Q I'm sorry, just to review it and --

2 A Just to review it and to respond.

3 Q Okay. At the time this letter was received by  
4 you, forgetting just for the moment the input of your  
5 attorney -- and, by the way, for the record, your attorneys  
6 were --

7 A Brown and Schwaninger.

8 Q How easily could you have supplied the information  
9 requested in this letter?

10 A It was basically impossible.

11 Q Could you explain why it was basically impossible?

12 A Two weeks previously, my shop and home had been  
13 severely damaged by the Northridge earthquake. My entire  
14 business and home were in a total disarray. We were  
15 attempting to rebuild, put things back, as well as meet  
16 urgent customer needs.

17 Q Expand, please, when you say total disarray,  
18 relative to your business? Explain the extent of the  
19 damage?

20 A Basically, the buildings looked liked they'd been  
21 picked up, shaken violently up and down and sideways, and  
22 then placed back down. Nothing was where it belonged.  
23 Bookcases fell over. The floors were strewn with books and  
24 papers. My desk collapsed, spewing hundreds of files all  
25 over the floor. Credenzas collapsed, spewing files

1 everywhere.

2 The primary computer was damaged at my shop.  
3 Water pipes, the water heaters were fractured, spewing water  
4 all over everything. Electricity was out. Basically, the  
5 place was a disaster. Huge racks that we had radios on in  
6 our storage room had teeped. They'd fallen over, dumping  
7 all their contents on the floor, till there was nothing but  
8 a pile of radios three feet tall.

9 Some areas were almost impossible to get into,  
10 because doors were blocked. You had to use alternative  
11 routes to even get in the various parts of the shop. It was  
12 basically like a horde of vandals had descended for a number  
13 of hours, with the intent of doing nothing but wrecking the  
14 place.

15 Q I'd like you to look at, if you would, at Bureau  
16 Exhibit 2, which is an April 7, 1994 letter addressed to  
17 Riley Hollingsworth from Dennis Brown.

18 A Yes.

19 Q Did you see that letter on or about April 7, 1994?

20 A Yes, I would have.

21 Q What was the nature of your review of the letter?

22 A I would have scanned through it.

23 Q If you could recollect, or to the best of your  
24 recollection around this period of time, what was your  
25 principal concern relative to responding or to the extent

1     you could provide information to the Commission, what was  
2     your concern about providing the information?

3           A     I don't -- please repeat the question.

4           Q     What was your principal concern to the extent that  
5     you could provide information to the Commission about  
6     actually providing any information to the Commission?

7           A     We would provide information as we possibly could.  
8     The request was just so massive, it was impossible to deal  
9     with.

10          Q     Tell me about your concerns about confidentiality.

11          A     I was very concerned, because what had been asked  
12     for was literally the entirety of the most confidential  
13     information of my company. The release of that information  
14     to the public would not only adversely affect my company,  
15     but my customers, as well. It is -- radio shops just do not  
16     release the system configuration of their customers' radio  
17     systems to the public. It's like releasing private  
18     citizens' cellular telephone numbers. It's just simply not  
19     done.

20                   The consequences to my company would be direct and  
21     economic. It would probably ruin my company. My customers  
22     expect me to maintain confidentiality of their records and  
23     their system configurations. I can't just release  
24     customers' information to the public. Can you imagine the  
25     liability of releasing an armored transport company's

1 frequency codes to the public? All it takes is one robbery  
2 where the bad guys know the frequency information and  
3 there's big trouble.

4 The same goes with alarm response companies and  
5 armed guard companies. We just cannot release that  
6 information to the public under any circumstances. To do so  
7 would endanger lives and property of my customers, their  
8 employees, and the liability to my company would be  
9 incredible.

10 Q Thank you. Would you look, please, at Bureau  
11 Exhibit 3? This also is a letter dated April 7, 1994,  
12 addressed to Riley Hollingsworth, signed by Curt Brown of  
13 the law firm of Brown and Schwaninger.

14 A Yes.

15 Q Did you see this letter on or about April 7, 1994?

16 A I would have, yes.

17 Q Could you describe the nature of your review of  
18 this letter?

19 A I would have read or scanned through it for the  
20 general content. I doubt I sat and read it word for word or  
21 analyzed it.

22 Q Why would you not have analyzed it or read it word  
23 for word at this period of time?

24 A I was very busy with dealing with the earthquake,  
25 with meeting the financial obligations I had at the time. I

1 was spending an inordinate amount of time with earthquake  
2 recovery, with helping customers, not to mention the  
3 continuous aftershocks that were being received at that  
4 period of time, which went on for six months after the  
5 earthquake.

6 Q Please look at Bureau Exhibit 4, which is a May  
7 11, 1994 letter addressed to you, signed by Riley  
8 Hollingsworth.

9 A Yes.

10 Q Do you recall receiving this letter?

11 A Yes.

12 Q Would you note, the last paragraph, the Commission  
13 is requiring you to file 50 copies of your response, do you  
14 see that?

15 A Yes.

16 Q What was your reaction to that request?

17 A It was totally incredulous to me.

18 Q Why?

19 A Because when -- I knew of no reason whatsoever why  
20 the Commission would ever want 50 copies of the most  
21 confidential information of my company for any other purpose  
22 but to distribute it. We had asked for confidentiality,  
23 they had refused it. When we said we were going to  
24 copyright it, now they want 50 copies of it.

25 I had dealt with the Commission before and



1 requests of confidentiality had been routinely granted. It  
2 was customary, it was never a problem receiving  
3 confidentiality from the Commission. And, here they were  
4 denying it. Then we said, well, we have to get this  
5 somehow. We're going to copyright it and they want 50  
6 copies. What could they possibly want 50 copies for, but to  
7 give it to exactly everybody I didn't want to have it? My  
8 competitors who are public and who knows who, anybody  
9 conceivably that asked for it. I just couldn't do that. It  
10 was extraordinary. I was flabbergasted and dismayed.

11 Q Were there any other events that occurred around  
12 or prior to this time that heightened your concern about  
13 confidentiality, or that the Commission would not keep the  
14 information confidential?

15 A Yes, there was.

16 Q What were those events?

17 A I had filed in the previous year a letter that a  
18 customer called Thompson Tree Service was now constructed  
19 and asked the Commission to look into it. I knew they  
20 weren't constructed, because we went and visited them. We  
21 found that they weren't, but they refused to do anything  
22 about an obsolete license.

23 Q They meaning the Commission?

24 A The customer, the customer, Thompson Tree, refused  
25 to do anything but they said they wanted to keep their

1 license. We said, well, it's already canceled automatically  
2 because you haven't used it in a couple of years. You told  
3 us this.

4 They said, oh, yeah, well, we don't want to do  
5 anything with it. Okay, we sent a letter into the  
6 Commission reporting the matter. We didn't hear anything  
7 from the Commission, so then we filed a finder's preference  
8 against the license.

9 Q Explain what you mean by a finder's preference,  
10 for the record?

11 A The Commission put in a program which it called  
12 the Finder's Preference Program. Basically, it encouraged  
13 licensees to play policeman, to go locate desirable licenses  
14 in the exclusive part of the spectrum from 470 MHz upwards,  
15 to determine licenses that had not been in use or had not  
16 been constructed, and then the licensee could file a prima  
17 facie case. That license had not been constructed or had  
18 been discontinued for a period greater than one year, and  
19 thus lay claim or file for a preference against that  
20 license. The Commission would then investigate after the  
21 filing is made, it was determined the licensee was correct  
22 and certain other criteria, the licensee would be awarded a  
23 preference to apply for a targeted license in an occupied  
24 spectrum, thus rewarding a licensee for his investigative  
25 efforts by giving them the license that they had located

1       that was out of compliance with the rules.

2               This is what we did with the Thompson Tree Service  
3       license when they refused to cooperate when we contacted  
4       them directly.

5           Q     All right, and continue, please, as to what  
6       happened?

7           A     Well, we had filed the finder's preference. The  
8       Commission had wrote to Thompson Tree. They apparently did  
9       not get a reply the first time and turned around and sent  
10      them a second letter. And, in that second letter, Thompson  
11      was asked to respond and also to send a copy to us.

12               Well, a Mrs. Thompson, Gail Thompson is her name,  
13      did respond, and in it, she said that the radios had been  
14      discontinued for more than two years, but that they wanted  
15      to retain their license, that they had considerable value in  
16      the licenses and would still want to be able to use the  
17      radios.

18               Well, we received her letter. I understood,  
19      certainly, where she was coming from. It wasn't my desire  
20      to take away something of value to them. So, I contacted  
21      Mrs. Thompson and said, we can provide repeater service to  
22      you. You'll need to sign off your old license like I talked  
23      to you some months previously, but we'd be glad to provide  
24      you repeater service for your radio, so you don't lose any  
25      money from your radio system. She said fine and signed up

1 with us.

2 Well, I then got a call from Mrs. Thompson about a  
3 week or ten days later. She received a call from a woman by  
4 the name of Anne Marie Wypijewski, if I'm pronouncing it  
5 correctly.

6 MR. SCHAUBLE: Wypijewski.

7 THE WITNESS: Well, we know who we're talking  
8 about. Apparently called Mrs. Thompson, and as it was  
9 relayed to me, the conversation went like this. Mrs.  
10 Thompson, I'm sorry, but I have to cancel your license,  
11 because you said it wasn't in operation for more than two  
12 years. That's the rules. So, what's going to happen here  
13 is, I'm going to cancel the license at the end of this week.  
14 Mr. Kay won't know about this for at least a week or more,  
15 and during that time, you can apply for a new license, and  
16 get a new license, so you can still use your radios.

17 When I heard this --

18 BY MR. SHAINIS:

19 Q Who told you this?

20 A This was Mrs. Thompson. Now, she had no idea,  
21 really, what she was being told and the significance of it,  
22 but I sure did. This was equivalent to a judge -- because  
23 Anne Marie is decision-making staff acting, in fact, as a  
24 judge, weighing our finder's preference, releasing what  
25 she's going to do, how she's going to rule, before she

1 releases the ruling, to tell Mrs. Thompson how to beat the  
2 effect of the ruling, to literally take from me that which I  
3 had reported in good faith to the Commission and had filed  
4 as a finder's preference. It was, to me, a direct stab at  
5 me to take away that which I had worked for, that I had in  
6 accordance with the rules, properly filed and was, in fact,  
7 an invalid license. She was taking away from me that which  
8 I had worked for and was doing it without notifying me, and  
9 that, through my lawyer, I was thoroughly of the opinion it  
10 was highly improper if not what they call ex parte  
11 representation made. This wasn't Mrs. Thompson calling in  
12 to check on something. This was Anne Marie going out of her  
13 way to tell Mrs. Thompson how to beat James Kay on a  
14 perfectly legitimate finder's preference and a perfectly  
15 legitimate report that Mrs. Thompson's license is canceled  
16 automatically. It was a way of sticking me and to help Mrs.  
17 Thompson and it just plain was wrong.

18 Q Did the Thompsons eventually apply for these  
19 facilities?

20 A Because Mrs. Thompson already had made a deal with  
21 me, and had signed a contract, part of which was to cancel  
22 her own license, she did not apply. I, however, did.

23 Q Has that application been granted?

24 A No, the Commission is still sitting on it.

25 Q How many years is this, now?

1           A     That was filed for in, I believe, April or May of  
2     1994. So, it's been on hold now for over four and a half  
3     years.

4                     To summarize what I said, if I can't trust the  
5     Commission to play by the rules and maintain  
6     confidentiality, but going out of their way to make  
7     telephone calls to tip people off how to beat me, with pre-  
8     release of decision material, how can I trust them?

9           Q     In that same exhibit, Bureau Exhibit 4, if you'd  
10    look at page two and page three, that again is the letter  
11    that is also contained in Bureau Exhibit 1?

12          A     Yes.

13          Q     And, look at the paragraph (1), do you see that?  
14    List alphabetically the call signs.

15          A     Yes.

16          Q     Explain, please, for the record why it would be  
17    extraordinarily difficult, if not impossible, to supply the  
18    information in that manner.

19          A     I don't keep my licenses or any customer records  
20    by call sign.

21          Q     Do you have any understanding that you are  
22    required to keep your records by call sign?

23          A     No, I don't believe there's any regulation  
24    whatsoever to keep it by call sign.

25          Q     You have reviewed the Commission's regulations, is

1       that correct, since you've been a licensee?

2           A       Yes.

3           Q       You periodically review them, is that correct?

4           A       Yes.

5           Q       You subscribe to the Commission's rules or you get  
6       the Commission's rules on a periodic basis?

7           A       For quite awhile, I subscribed to Pike and Fischer  
8       and I also regularly bought copies of the rule book.

9           Q       You believe you're conversant in the Commission's  
10       rules?

11          A       Those parts that directly affect an operation.

12          Q       And, you know of no rule that requires you to keep  
13       information by licensee names, is that correct? By call  
14       sign, I'm sorry?

15          A       No, I've always kept them by frequency or system.

16          Q       You indicated that there was computer damage --

17               CHIEF JUDGE CHACKIN: You may want to expand on  
18       why it would be extraordinarily difficult to provide the  
19       information the Commission sought, since you don't keep your  
20       files by call sign.

21               THE WITNESS: What we'd have to do, what I did  
22       have to do for discovery involved literally taking five  
23       separate huge file drawers out, opening each folder out one  
24       at a time, locating the most current copy of the license,  
25       photocopying it, doing this through every folder that I had,

1     which were hundreds, and then sitting down and manually  
2     putting them in an alphabetical sequence, and that took  
3     several hours.

4                   BY MR. SHAINIS:

5           Q     And, at the time of this letter, why didn't you do  
6     it at that time, the methodology you just discussed?

7           A     Well, this is when we're in total disarray. I had  
8     almost no staff available and I had almost no time myself  
9     available to do it. It's the type of thing that with the  
10    computer system the Commission had, they only need to stick  
11    my name in. They could have kicked the whole thing out in a  
12    matter of seconds. They already had it. For me, it would  
13    take hours. For them, they kicked it out in seconds. They  
14    know what my name is.

15                   MR. SHAINIS: Just a minute.

16                   (Pause.)

17                   CHIEF JUDGE CHACKIN: Would you explain to me what  
18    do you mean, the Commission could have kicked it out in  
19    seconds?

20                   THE WITNESS: They enter in licensee names into  
21    their computer and a search for all licenses issued to, and  
22    everything I have is under, is either directly under my name  
23    or my corporate names, which the Commission is well aware  
24    of. I don't have any secret hidden licenses somewhere that  
25    they don't know about it. There's nothing secret or hidden.



1 I've always put my name all over everything I did.

2 CHIEF JUDGE CHACKIN: I assume the Bureau is not  
3 going to put on anybody to testify as to why if it was that  
4 simple to obtain this information, why they sought it from  
5 Mr. Kay?

6 MR. KNOWLES-KELLETT: Your Honor, as it says in  
7 the HDO, we didn't know the names he was operating under.

8 CHIEF JUDGE CHACKIN: You didn't ask him for that.  
9 You asked him to do a call sign listing. The question is,  
10 you had, at least under Mr. Kay, and you certainly, based on  
11 the information in the designation order, you had  
12 allegations that he was operating under all these different  
13 names.

14 MR. KNOWLES-KELLETT: Yes, and we didn't know  
15 which ones he was, in fact --

16 CHIEF JUDGE CHACKIN: Presumably, you could have  
17 obtained all this information very simply by the  
18 availability of materials you had in your computers?

19 MR. KNOWLES-KELLETT: I think you're not  
20 understanding it, Your Honor. We cannot tell who operates  
21 Oat Trunking Group, for example. Mr. Kay did not sign Oat  
22 Trunking Group. Subsequently, Mr. Kay told us that he, in  
23 fact, is the sole owner of Oat Trunking Group, just as an  
24 example. So, we could tell from our computer what Oat  
25 Trunking Group had, but we couldn't tell that that was Mr.

1 Kay's corporation.

2 CHIEF JUDGE CHACKIN: But, you could have, at  
3 least, obtained the call signs and license names and all his  
4 facilities operated by him?

5 MR. KNOWLES-KELLETT: No, exactly not.

6 MR. SCHAUBLE: We could have determined what in  
7 our records were call signs owned by him. Owned by him.

8 MR. KNOWLES-KELLETT: Licenses in Kay's names,  
9 yes.

10 CHIEF JUDGE CHACKIN: You could have done that?

11 MR. KNOWLES-KELLETT: Yes.

12 CHIEF JUDGE CHACKIN: Then, you could have limited  
13 your inquiry, presumably, to ask him about any other names  
14 that he operated under, and then obtain that information?  
15 That could have been done very simply, could it not?

16 MR. KNOWLES-KELLETT: Your Honor, asking for 150  
17 call signs is not so onerous.

18 CHIEF JUDGE CHACKIN: Well, it may be, if he  
19 claims that you maintained the records.

20 MR. KNOWLES-KELLETT: Okay, he didn't tell us that  
21 he had trouble maintaining his records, Your Honor. He told  
22 us he wanted immunity.

23 CHIEF JUDGE CHACKIN: All right. Go ahead,  
24 counsel.

25

1 BY MR. SHAINIS:

2 Q Mr. Kay, returning once again to the January 31,  
3 1994 letter, the totality of the information the Commission  
4 requested in that letter, I just want to make sure I  
5 understand and the record is clear, what were the obstacles  
6 in providing that?

7 A The only way I can really describe it is, when we  
8 ultimately did do it in discovery, it took more than three  
9 staff persons almost three months doing nothing but this,  
10 not to mention easily if not 40 to 60 hours of my own  
11 personal time to comply and to compile the information. It  
12 was -- in discovery, we produced like 38,000 photocopies.  
13 We ruined a couple of copiers in the process, and even for  
14 the extent that discovery was somewhat larger than the  
15 initial 308(b) request, I don't think that would have  
16 reduced our burden by more than 2,000, 3,000, maximum 4,000  
17 pages of documents.

18 So, it still would have been well in the 30,000's  
19 of copies of documents that had to be produced. We did this  
20 after we had more or less put the company back in order  
21 after the earthquake. And, it severely hurt my business  
22 doing that, taking that much staff away from what should  
23 have been their duties.

24 During the time of the earthquake, with the place  
25 in shambles, it was absolutely impossible. I had no staff,

1 no availability. Everything was total disarray. It was  
2 impossible.

3 Q Please refer to your Exhibit 5.

4 A Yes.

5 Q And, that is a May 17, 1994 letter from your  
6 counsel to Mr. Riley Hollingsworth. On page one, in the  
7 third paragraph, Mr. Brown states, "Since the Commission  
8 cannot possibly require 50 copies for its own internal use,  
9 the only reasonable conclusion is that the Commission  
10 intends to make further circulation of Mr. Kay's response  
11 beyond the Commission." Do you see that?

12 A Yes.

13 Q Did you ever receive a response to that statement  
14 from the Commission?

15 A No, to this day, the Commission has yet to explain  
16 what it needed 50 copies for.

17 Q I'd like you to refer to Bureau Exhibit 6, please,  
18 which is a May 20, 1994 letter addressed to Dennis Brown  
19 from Riley Hollingsworth. Do you see that?

20 A Yes.

21 Q Did you read that letter on or about May 20, 1994?  
22 Was it provided to you?

23 A It would have been provided to me and I either  
24 read or scanned it.

25 Q You either what?

1           A     I either scanned it or read it.

2           Q     Okay.

3           CHIEF JUDGE CHACKIN: Did you say you did not read  
4     it?

5           THE WITNESS: No, I said I would have received it  
6     and I either scanned through it or read thorough it. I'm  
7     sure I didn't go through it word by word, analyzing it.

8           CHIEF JUDGE CHACKIN: All right.

9           BY MR. SHAINIS:

10          Q     The reason, if I understood you correctly that you  
11     did not go through it word by word to analyze it, what would  
12     be the reason for that?

13          A     I had assigned the task to my attorneys to deal  
14     with the Commission, to explain to them the situation we  
15     were in, and they were responding to it.

16          Q     And, one question about the computer system in  
17     place at the time of the January 31 letter from the  
18     Commission. Was the computer for information retrieval?  
19     Was the program for information retrieval?

20          MR. SCHAUBLE: Objection. I'm not sure I  
21     understand what the question means.

22          CHIEF JUDGE CHACKIN: I'll overrule the objection.

23          THE WITNESS: The purpose of our computer was to  
24     generate bills, to create accounting records, cash journals,  
25     accounts receivable and last bills. The purpose was for

1     billing customers automatically and efficiently, to keep  
2     track of their payments. More than anything else, that was  
3     its purpose, was for billing.

4             BY MR. SHAINIS:

5             Q     Was it used to retrieve information concerning  
6     customer configurations?

7             A     It could to a degree. We had for our convenience,  
8     on many of the accounts, had a frequency information as to  
9     what frequencies they were on, but it was by no means  
10    complete. As a quick reference as to where a customer was,  
11    it was useful. But, we didn't -- the computer was not the  
12    source of information for detailed information on the  
13    customers. That was always obtained from the hard files.

14            The computer did not have anywhere near all the  
15    information necessary to fully --

16            MR. SHAINIS: Thank you. Just a moment, Your  
17    Honor.

18            (Pause.)

19            BY MR. SHAINIS:

20            Q     Mr. Kay, could you please turn to Bureau Exhibit  
21    16 and look at page three, please? Do you have that in  
22    front of you?

23            A     Yes.

24            Q     If you look at the first sentence of that  
25    paragraph, it states, "It is possible that by inquiring of

1 his hundreds of customers, Kay could ascertain the requested  
2 information." Could you explain what you meant by that  
3 statement?

4 A Well, first, this is my attorney's wording, not  
5 mine. My best guess at what he meant is that by contacting  
6 each and every one of our customers and requesting the  
7 information that they had in the form of sales invoices,  
8 service invoices from their purchases of radios, we could  
9 determine how many units they had in operation and for what  
10 period of time.

11 Many of my repeater customers were not sold their  
12 radios by my own sales and service company, but were, in  
13 fact, sold by other dealers and therefore, I would not have  
14 in my possession any of their sales invoices, service  
15 invoices or installation invoices relating to the physical  
16 radios themselves.

17 But, conceivably, if the customers were still in  
18 business and retained their invoices from their servicing  
19 dealer, we could have obtained copies of it and been able to  
20 supply the information that the customer had that we did  
21 not. It would have been a monumental task, because we would  
22 have had to contact probably close to 1,000 customers and  
23 ask if they had records and if they'd be willing to share  
24 copies of them with us.

25 Q Now, you indicated that you had received other

1 letters from the Commission in the past since you'd been a  
2 licensee, prior to the letter that has been contained in  
3 your Exhibit 1.

4 A Dozens of communications, possibly 100 or 200.  
5 Many.

6 Q And, could you explain in general terms the  
7 difference in the past letters you got from the Commission  
8 and the letter that is contained in your Exhibit 1?

9 MR. SCHAUBLE: Objection, relevance.

10 CHIEF JUDGE CHACKIN: Overruled.

11 THE WITNESS: All previous inquiries that I recall  
12 were very specific to a point. What is the configuration  
13 with this particular station by call sign or at this  
14 location? When did you construct call sign WNB, whatever?  
15 A call sign, or please tell us how you plan to share this  
16 frequency with other users, revoking current users on this  
17 frequency? Everything was very specific, to the point, and  
18 exacting in its detail.

19 The 308(b) letter of January 31, 1994 was  
20 extremely broad, very non-specific. It asked for everything  
21 about everything on anything. It was completely different  
22 than anything I'd ever received or seen before.

23 MR. SHAINIS: Your Honor, I would like to approach  
24 the witness, if I might?

25 CHIEF JUDGE CHACKIN: All right.



1 (Pause.)

2 BY MR. SHAINIS:

3 Q Mr. Kay, I'm showing you a piece of paper that  
4 comes from the Bureau's Statement of Readiness for Hearing.

5 MR. KELLER: Just for the record, that was a  
6 pleading filed in this docket on June 3, 1998.

7 MR. SCHAUBLE: And, for the record, could you  
8 refer to the page you're referring to?

9 MR. SHAINIS: Page seven.

10 BY MR. SHAINIS:

11 Q And, Mr. Kay, have you completed your review?

12 A Yes.

13 Q Paragraph 14, which is what I'd like you to  
14 concentrate on --

15 MR. SCHAUBLE: Your Honor, just a preliminary  
16 inquiry. We did not go into this document. Is this beyond  
17 the scope of the Bureau's direct examination?

18 CHIEF JUDGE CHACKIN: Well, the fact that you  
19 didn't go into the document has nothing to do with the fact  
20 that you dealt with the subject matter in question. I  
21 don't know where this is going. This is cross-examination.  
22 I'll permit it.

23 If you feel that it goes beyond any questions that  
24 you asked, any areas you covered, although it seems to me  
25 you covered every area imaginable, you can make an

1 objection. Go ahead, counsel.

2 BY MR. SHAINIS:

3 Q Thank you. Mr. Kay, paragraph 14 of this page  
4 states, "The Bureau intends to present evidence that Kay did  
5 not construct stations..." and they list a series of call  
6 letters. I'd like to go through and I'll read the call  
7 letters to you, and could you tell me whether the station  
8 was timely constructed or not?

9 CHIEF JUDGE CHACKIN: Is there an issue still in  
10 this hearing on that?

11 MR. SCHAUBLE: Yes, Your Honor, there is an issue  
12 as to --

13 CHIEF JUDGE CHACKIN: All right --

14 MR. SHAINIS: My problem is, Your Honor, I don't  
15 believe the Bureau has addressed the issue.

16 MR. KELLER: Or, at least, it's not apparent how  
17 it's been addressed.

18 MR. SHAINIS: Right, right.

19 MR. KELLER: So, we feel we've got to cover all  
20 the bases.

21 CHIEF JUDGE CHACKIN: Unless the Bureau --

22 MR. SHAINIS: Unless the Bureau wants to concede  
23 that they didn't present any evidence on this?

24 MR. KNOWLES-KELLETT: Well, we presented the  
25 evidence we thought was there, that we described in the

1 Statement of Readiness for Hearing.

2 CHIEF JUDGE CHACKIN: All right. Go ahead with  
3 your questions.

4 BY MR. SHAINIS:

5 Q Station call letters W, P as in Paul, E as in  
6 Edward, E as in Edward, 253, was that station timely  
7 constructed?

8 A Yes, at both authorized locations.

9 Q And, how do you know that?

10 A Because we had existing facilities there,  
11 operating as a community repeater for the customer in  
12 question, for who we applied for that station was providing  
13 service to before and after grant of this license.

14 Q So, at the time of the grant, it was already  
15 constructed?

16 A Yes, it was.

17 Q Next call letter is W-I as in Israel, K as in  
18 King, 726. Was that station timely constructed?

19 A Yes, it was.

20 Q How do you know that?

21 A We had a lease at Sierra Peak at the TLF Building  
22 and we installed all the repeaters on a timely basis that  
23 were going into Sierra Peak. Continuously had a lease from  
24 well before any of these grants. The first step, the  
25 Meridian Building, and then at the TLF Building.

1           Q     The next one is WIK 896. Was that timely  
2 constructed?

3           A     Yes, it was.

4           Q     How do you know that?

5           A     That was also at Sierra Peak.

6           Q     And, therefore there was a lease, is that what  
7 you're saying?

8           A     Correct, our leasing goes back to, I believe,  
9 1987, and all of these grants, the earliest is like 1989 or  
10 1990 or 1991. We were continuously on that hill with  
11 community repeaters and private carriers from well before  
12 any of the grants in question here.

13          Q     Our next, WIK 664, was that timely constructed?

14          A     Yes, it was.

15          Q     How do you know that?

16          A     It was also at Sierra Peak.

17          Q     WIL 260.

18          A     Same.

19          Q     Thank you. Same that was at Sierra Peak and same  
20 that was timely constructed?

21          A     Yes.

22          Q     WIK 983?

23          A     Was at Sierra Peak and was timely constructed.

24          Q     WIL 469?

25          A     Was at Sierra Peak and timely constructed.

1 Q WIH 339?

2 A I'm confused on that license as to how it's on  
3 here, because it had gone through several modifications.  
4 Initially I believe it was an assignment of authorization  
5 from a customer that was constructed at Lukens Mountain and  
6 it was constructed there well within its -- it was  
7 constructed by a customer that had been assigned to me.

8 Subsequently, a station was added at Sierra Peak  
9 and that station was timely constructed. So, all three  
10 separate locations, depending upon the modification that  
11 they're looking at on this call sign were all constructed on  
12 a timely basis. I'm really confused why they put this one  
13 on there at all.

14 Q All right. WIK 875?

15 A Constructed at Sierra Peak and timely.

16 Q WIK 287?

17 A Constructed at Sierra Peak on a timely basis.

18 Q WIK 374?

19 A Constructed at Sierra Peak on a timely basis.

20 Q WNJL 306?

21 A That was constructed at Santiago Peak in either  
22 January or February of 1988 in the Meridian Building, where  
23 I initially did my installation on Santiago Peak, the  
24 initial installations, a memory I will never forget by  
25 getting a flat tire 20 miles back in the middle of nowhere.

1 I do remember that construction very well, thank you. It  
2 was constructed very much timely at Santiago Peak.

3 Q WNXW 487?

4 A It has two stations on it, at Heaps Peak and  
5 Santiago Peak. Since it's the business radio service,  
6 they're both primary. Both were constructed on a timely  
7 basis at the proper locations.

8 Q Thank you. Mr. Kay, would you please explain for  
9 the record your normal practices in constructing a station  
10 if it's not already constructed at the time you receive the  
11 license?

12 A We oftentimes were preconstructing stations. We  
13 would apply for a license, we knew we were going to put it  
14 there and would, in fact, install the hardware, tune it,  
15 test it and turn it off electronically. It was electrically  
16 energized. It was fully capable of operation but was turned  
17 off by remote control so that it could not function until a  
18 grant was authorized to use the equipment.

19 When we were actually constructing a new station  
20 and did not have it already installed by the time of grant,  
21 we'd already made plans to do so and usually had equipment  
22 installed within two months, three months most after the  
23 grant of a license. We didn't dally about our construction.  
24 We had too much need for it.

25 Q Would it be safe to say you had a financial

1 incentive to get these things constructed as quickly as  
2 possible?

3 A The sooner we have it in operation, the sooner we  
4 can put paying customers on it. So, yes, very much a  
5 financial incentive.

6 Q When you received a license, did you somehow  
7 calendar the eight month period?

8 A Not really. We'd either had it already done,  
9 because we knew it was pending, or on construction, if we  
10 went and did it on 800 MHz, it wasn't already done for when  
11 granted, I'd make a note, usually on just a scrap paper,  
12 yellow legal paper or something, that installed certain  
13 frequency at a hilltop on a certain day, and toss it in the  
14 frequency file. And, when I then subsequently received a  
15 800A letter, I would take out the note, fill out the 800A  
16 letter and send the 800A to the Commission, keep a copy for  
17 my file and discard the note.

18 Q What is an 800A letter?

19 A After grant of a new 800 MHz facility that  
20 involved a base station facility, the Commission, somewhere  
21 between nine months and a year after the grant of the  
22 license, would send a letter that basically reads, "Dear  
23 Licensee: On certain dates, you are granted the licensed  
24 call sign, whatever, for these facilities. Please tell us  
25 what and where your facility was constructed, put your

1 coordinates down here, date of construction," and return it  
2 to them. Or, if it's not constructed, so indicate. It's a  
3 form letter.

4 Q Mr. Kay, would you please refer to your Exhibit  
5 19? And, this is a pleading that was filed, it's Further  
6 Answer to Interrogatory 4 of Wireless Telecommunications  
7 Bureau's First Set of Interrogatories by James A. Kay, Jr.

8 A Yes.

9 Q After this was submitted, to the best of your  
10 knowledge, did the Bureau ever make any follow up request  
11 for information?

12 A They did not.

13 (Pause.)

14 CHIEF JUDGE CHACKIN: What are you giving the  
15 witness?

16 MR. SCHAUBLE: Volume 329 to 345. Counsel will be  
17 directing him to Exhibits 339 and 341.

18 BY MR. SHAINIS:

19 Q Mr. Kay, would you look at Exhibit 339, please,  
20 Bureau Exhibit 339, that is?

21 A Yes.

22 Q This is entitled Radio System Management and  
23 Marketing Agreement, is that correct?

24 A Yes.

25 Q And, it's dated October 28, 1994, between you and

Heritage Reporting Corporation  
(202) 628-4888